



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 30, 1996

Ms. Tatia R. Randolph
Assistant City Attorney
Criminal and Police Division
Office of the City Attorney
Municipal Building
Dallas, Texas 75201

OR96-1997

Dear Ms. Randolph:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 101644.

The City of Dallas (the "city") received a request for "any and all records your office may have on Stanley W. Stanford . . . a Police Officer with the Dallas Police Department in 1985 and 1986." The city has made most of the requested information available to the requestor. However, you contend that some of the requested information, which you have submitted to this office labeled as exhibits B and C, is excepted from disclosure under sections 552.101 and 552.108 of the Government Code.

Chapter 552 of the Government Code imposes a duty on a governmental body seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within ten days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301, the requested information is presumed to be public. See Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. See, e.g., Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

A date stamp on the request for information indicates that the city received the request on August 5, 1996. However, you did not request a decision from this office until August 16, 1996, more than ten days after the city received the request. Therefore, unless information is

confidential by law or other compelling reasons exist as to why the information should not be made public, you must release the information. Open Records Decision No. 195 (1978). *See also* Gov't Code § 552.352 (the distribution of confidential information is a criminal offense).

Where information is made confidential by other law or where third party interests are at issue, a compelling reason exists to overcome the presumption that information is open under section 552.302. *See* Open Records Decision No. 150 (1977).¹ One document that you submitted to this office is a medical record. We have marked the medical record for your convenience. Section 5.08(b) of the Medical Practice Act (the "MPA"), article 4495b, V.T.C.S., provides as follows:

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are *created or maintained by a physician* are confidential and privileged and may not be disclosed except as provided in this section.

The MPA deems medical records confidential and governs their release. Therefore, the city may release the marked record only in accordance with the MPA. Open Records Decision No. 598 (1991). *See* V.T.C.S. art. 4495b, §§ 5.08(c), (j). You have not shown a compelling interest to overcome the presumption that the remainder of the information at issue is public.² Thus, you must release the remaining information to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have any questions about this ruling, please contact our office.

Yours very truly,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

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¹We understand that Dallas is a civil service city under section 143.089 of the Texas Local Government Code. Although we do not believe that any of the information at issue is deemed confidential by section 143.089(g), we note that information maintained in a police department's internal personnel files pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied).

²Section 552.108 is a discretionary exception that can be waived by a governmental body. You have waived your section 552.108 claim by failing to timely submit your request to this office. *See* Open Records Decision No. 216 (1978) (section 552.108 is discretionary exception).

Ref: ID# 101644

Enclosures: Submitted documents

cc: Mr. John B. Powell
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P.O. Box 11648
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(w/o enclosures)